DIVISION 11.5. SENTENCING FOR DRIVING WHILE UNDER THE INFLUENCE

CHAPTER 1. COURT IMPOSED PENALTIES: PERSONS LESS THAN 21 YEARS OF AGE

Article1. General Provisions

DUI Penalties for Persons Under 21 Years of Age

23500. This chapter applies to the imposition of penalties and sanctions by the courts on persons who were less than 21 years of age at the time of the commission of the driving while under the influence offenses described in Chapter 12 (commencing with Section 23100) of Division 11.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Article2. Penalties for a Violation of Section 23140

DUI Penalties for Persons Under 21 Years of Age: Driving-Under-the-Influence-Program

23502. (a) Notwithstanding any other provision of law, if a person who is at least 18 years of age is convicted of a first violation of Section 23140, in addition to any penalties, the court shall order the person to attend a program licensed under Section 11836 of the Health and Safety Code, subject to a fee schedule developed under paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code.

- (b) The attendance in a licensed driving-under-the-influence program required under subdivision (a) shall be as follows:
- (1) If, within seven years of the current violation of Section 23140, the person has not been convicted of a separate violation of Section 23140, 23152, or 23153, or of Section 23103, with a plea of guilty under Section 23103.5, or of Section 655 of the Harbors and Navigation Code, or of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, the person shall complete, at a minimum, the education component of that licensed driving-under-the-influence program.
- (2) If the person does not meet the requirements of paragraph (1), the person shall complete, at a minimum, the program described in paragraph (1) of subdivision (c) of Section 11837 of the Health and Safety Code.
- (c) The person's privilege to operate a motor vehicle shall be suspended by the department as required under Section 13352.6, and the court shall require the person to surrender his or her driver's license to the court in accordance with Section 13550.
- (d) The court shall advise the person at the time of sentencing that the driving privilege will not be restored until the person has provided the department with proof satisfactory to the department that the person has successfully completed the driving under the influence program required under this section.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Repealed Sec. 3, and added Sec. 4, Ch. 1063, Stats. 2000. Effective January 1, 2001.

Article3. Youthful Drunk Driver Visitation Program

Title

23509. This Articleshall be known and may be cited as the "Youthful Drunk Driver Visitation Program Act."

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Legislative Intent: Visitation Program

23510. The Legislature finds and declares all of the following:

- (a) Young drivers often do not realize the consequences of drinking alcohol or ingesting any other drugs, whether legal or not, and driving a motor vehicle while their physical capabilities to drive safely are impaired by those substances.
- (b) Young drivers who use alcohol or other drugs are likely to become dependent on those substances and prompt intervention is needed to protect other persons, as well as the young driver, from death or serious injury.
- (c) The conviction of a young driver for driving under the influence of an alcoholic beverage, a drug, or both, identifies that person as a risk to the health and safety of others, as well as that young driver, because of the young driver's inability to control his or her conduct.
- (d) It has been demonstrated that close observation of the effects on others of alcohol and other drugs, both chronic and acute, by a young driver convicted of driving under the influence has a marked effect on recidivism and should therefore be encouraged by the courts, prehospital emergency medical care personnel, and other officials charged with cleaning up the carnage and wreckage caused by drunk drivers.
- (e) The program prescribed in this Articleprovides guidelines for the operation of an intensive program to discourage recidivism by convicted young drunk drivers.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Visitation Program: Defined

23512. For the purposes of this article, "program" means the Youthful Drunk Driver Visitation Program prescribed in this article.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Participation in Program as a Condition of Probation

- 23514. (a) If a person is found to be in violation of Section 23140, is convicted of, or is adjudged a ward of the juvenile court for, a violation of Section 21200.5, 23140, or 23152 punishable under Section 23536, or Section 23220, 23221, or 23222, subdivision (a) or (b) of Section 23224, or Section 23225 or 23226, and is granted probation, the court may order, with the consent of the defendant or ward, as a term and condition of probation in addition to any other term and condition required or authorized by law, that the defendant or ward participate in the program.
- (b) The court shall give preference for participation in the program to defendants or wards who were less than 21 years of age at the time of the offense if the facilities of the program in the jurisdiction are limited to fewer than the number of defendants or wards eligible and consenting to participate.
- (c) The court shall require that the defendant or ward not drink any alcoholic beverage at all before reaching the age of 21 years and not use illegal drugs.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Suitability for Program

23516. The court shall investigate and consult with the defendant or ward, defendant's or ward's counsel, if any, and any proposed supervisor of a visitation under the program, and the court may consult with any other person whom the court finds may be of value, including, but not limited to, the defendant's or ward's parents or other family members, in order to ascertain that the defendant or ward is suitable for the program, that the visitation will be educational and meaningful to the defendant or ward, and

that there are no physical, emotional, or mental reasons to believe the program would not be appropriate or would cause any injury to the defendant or ward.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Court-Required Visitation

- 23517. (a) To the extent that personnel and facilities are made available to the court, the court may include a requirement for supervised visitation by the defendant or ward to all, or any, of the following:
- (1) A trauma facility, as defined in Section 1798.160 of the Health and Safety Code, a base hospital designated pursuant to Section 1798.100 or 1798.101 of the Health and Safety Code, or a general acute care hospital having a basic emergency medical services special permit issued pursuant to subdivision (c) of Section 1277 of the Health and Safety Code that regularly receives victims of vehicle accidents, between the hours of 10 p.m. and 2 a.m. on a Friday or Saturday night to observe appropriate victims of vehicle accidents involving drinking drivers, under the supervision of any of the following:
- (A) A registered nurse trained in providing emergency trauma care or prehospital advanced life support.
 - (B) An emergency room physician.
- (C) An emergency medical technician-paramedic or an emergency medical technician II.
- (2) A facility that cares for advanced alcoholics, such as a chemical dependency recovery hospital, as defined in Section 1250.3 of the Health and Safety Code, to observe persons in the terminal stages of alcoholism or drug abuse, under the supervision of appropriately licensed medical personnel.
- (3) If approved by the county coroner, the county coroner's office or the county morgue to observe appropriate victims of vehicle accidents involving drinking drivers, under the supervision of the coroner or a deputy coroner.
- (b) As used in this section, "appropriate victims" means victims whose condition is determined by the visitation supervisor to demonstrate the results of accidents involving drinking drivers without being excessively gruesome or traumatic to the probationer.
- (c) If persons trained in counseling or substance abuse are made available to the court, the court may coordinate the visitation program or the visitations at any facility designated in subdivision (a) through those persons.
- (d) Any visitation shall include, before any observation of victims or disabled persons by the probationer, a comprehensive counseling session with the visitation supervisor at which the supervisor shall explain and discuss the experiences which may be encountered during the visitation in order to ascertain whether the visitation is appropriate for the probationer.
- (e) If at any time, whether before or during a visitation, the supervisor of the probationer determines that the visitation may be or is traumatic or otherwise inappropriate for the probationer, or is uncertain whether the visitation may be traumatic or inappropriate, the visitation shall be terminated without prejudice to the probationer.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Conference After Visitation

23518. (a) The program may include a personal conference after the visitations described in Section 23517 between the sentencing judge or judicial officer or the person responsible for coordinating the program for the judicial district and the probationer, his or her counsel, and, if available, the probationer's parents to discuss the experiences of the visitation and how

those experiences may impact the probationer's future conduct.

(b) If a personal conference described in subdivision (a) is not practicable, because of the probationer's absence from the jurisdiction, conflicting time schedules, or other reasons, the program should provide for a written report or letter by the probationer to the court discussing the experiences and their impact on the probationer.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Immunity from Liability

23518.5. The county, a court, any facility visited pursuant to the program, the agents, employees, or independent contractors of the court, county, or facility visited pursuant to the program, and any person supervising a probationer during the visitation, is not liable for any civil damages resulting from injury to the probationer, or civil damages caused by the probationer, during, or from any activities relating to, the visitation, except for willful or grossly negligent acts intended to, or reasonably expected to result in, that injury or damage and except for workers' compensation for the probationer as prescribed by law if the probationer performs community service at the facility as an additional term or condition of probation.

Article4. Penalties for a Violation of Section 23152 or 23153

Minors: Alcohol or Drug Education Program Required

(a) Whenever, in any county specified in subdivision (b), a judge of a juvenile court, a juvenile traffic hearing officer, or referee of a juvenile court finds that a person has committed a first violation of Section 23152 or 23153, the person shall be required to participate in and successfully complete an alcohol or drug education program, or both of those programs, as designated by the court. The expense of the person's attendance in the program shall be paid by the person's parents or guardian so long as the person is under the age of 18 years, and shall be paid by the person thereafter. However, in approving the program, each county shall require the program to provide for the payment of the fee for the program in installments by any person who cannot afford to pay the full fee at the commencement of the program and shall require the program to provide for the waiver of the fee for any person who is indigent, as determined by criteria for indigency established by the board of supervisors. Whenever it can be done without substantial additional cost, each county shall require that the program be provided for juveniles at a separate location from, or at a different time of day than, alcohol and drug education programs for adults.

(b) This section applies only in those counties that have one or more alcohol or drug education programs certified by the county alcohol program administrator and approved by the board of supervisors.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Minors: Out-of-State Offence

23521. Any finding of a juvenile court judge, juvenile traffic hearing officer, or referee of a juvenile court of a commission of an offense in any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of a violation of Section 23152 for the purposes of Sections 13352, 13352.3, and 13352.5, and the finding of a juvenile court judge, juvenile traffic hearing officer, or referee of a juvenile court of a commission of an offense which, if committed in this state, would be a violation of Section 23153 is a conviction

of a violation of Section 23153 for the purposes of Sections **13352** and () 13352.3.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 18, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following "13352.3, and 13352.5."

CHAPTER 2. COURT PENALTIES

Article1. General Provisions

General Provisions

23530. This chapter applies to the imposition of penalties, sanctions, and probation upon persons convicted of violating driving while under the influence offenses that are set forth in Chapter 12 (commencing with Section 23100) of Division 11.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Article2. Penalties for a Violation of Section 23152

Penalty: First Conviction

- 23536. (a) If any person is convicted of a first violation of Section 23152, that person shall be punished by imprisonment in the county jail for not less than 96 hours, at least 48 hours of which shall be continuous, nor more than six months and by a fine of not less than three hundred ninety dollars (\$390), nor more than one thousand dollars (\$1,000).
- (b) The court shall order that any person punished under subdivision (a), who is to be punished by imprisonment in the county jail, be imprisoned on days other than days of regular employment of the person, as determined by the court. If the court determines that 48 hours of continuous imprisonment would interfere with the person's work schedule, the court shall allow the person to serve the imprisonment whenever the person is normally scheduled for time off from work. The court may make this determination based upon a representation from the defendant's attorney or upon an affidavit or testimony from the defendant.
- (c) Except as provided in paragraph (2) of subdivision (a) of Section 23538, the person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (1) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

Amended Sec. 11, Ch. 756, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Supersedes Ch. 118.

Amended and renumbered from 23160 Sec. 19, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1, 1999.

Amended Sec. 19, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material.

Conditions of Probation: First Conviction

- 23538. (a) Except as provided in subdivision (d), if the court grants probation to any person punished under Section 23536, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be subject to one of the following:
- (1) Be confined in the county jail for at least 48 hours but not more than six months, and pay a fine of at least three hundred ninety dollars (\$390), but not more than one thousand dollars (\$1,000). Except as provided in paragraph (2), the person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (1) of subdivision (a) of Section 13352. *The court shall require the person to*

surrender the driver's license to the court in accordance with Section 13550.

- (2) Pay a fine of at least three hundred ninety dollars (\$390) but not more than one thousand dollars (\$1,000), and, if the person gives proof of financial responsibility, as defined in Section 16430, to the Department of Motor Vehicles, have the privilege to operate a motor vehicle restricted for 90 days to necessary travel to and from that person's place of employment and to and from participation in a program described in subdivision (b). If driving a motor vehicle is necessary to perform the duties of the person's employment, the restriction also shall allow the person to drive to locations within the person's scope of employment. Whenever the driving privilege is restricted pursuant to this paragraph, the person shall maintain proof of financial responsibility for three years.
- (3) If the court elects to order a 90-day restriction as provided for in paragraph (2), the court shall order and advise the person of the following matters:
- (A) If the person's privilege to operate a motor vehicle is suspended under Section 13353.2, the court-ordered restriction does not allow the person to operate a motor vehicle unless the suspension under Section 13353.2 has either been served to completion or set aside, and his or her license has been reinstated. The restriction of the driver's license described in paragraph (2) shall commence upon the reinstatement of the privilege to operate a motor vehicle.
- (B) If a suspension was not imposed pursuant to Section 13353.2, the person shall be advised by the court that the person's driving privilege may be suspended by the department pursuant to subdivision (c) of Section 13352.4 until proof of financial responsibility is provided.
- (b) In any county where the board of supervisors has approved, and the State Department of Alcohol and Drug Programs has licensed, a program or programs described in Section 11837.3 of the Health and Safety Code, the court shall also impose as a condition of probation that the driver shall enroll and participate in, and successfully complete () *a driving-under-the-influence* program, licensed pursuant to Section 11836 of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court.
- (1) The court shall refer a first offender whose blood-alcohol concentration was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.
- (2) The court shall refer a first offender whose blood-alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test, to participate for at least six months or longer, as ordered by the court, in a licensed program that consists of at least 45 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.
- (3) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until the person has provided proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.
 - (c) (1) The court shall revoke the person's probation pursuant to Section

23602, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b).

- (2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the department and with the State Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (A) failure to enroll in, or failure to successfully complete, the program, or (B) successful completion of the program as ordered.
- (d) Notwithstanding subdivision (a), if the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement specified in Section 15278, the court shall upon conviction order the department to suspend the driver's privilege pursuant to paragraph (1) of subdivision (a) of Section 13352.

Amended Ch. 272, Stats. 1993. Effective August 2, 1993.

Amended Ch. 1244, Stats. 1993. Effective January 1, 1994. Amended Sec. 12, Ch. 756, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Su-

Amended and renumbered from 23161 Sec. 20, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1, 1999.

Amended Sec. 20, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following "an alcohol and other drug education and counseling"

Penalty: Second Offense Within Seven Years

If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of a separate violation of Section 23103, as specified in Section 23103.5, () 23152, or 23153, which resulted in a conviction, that person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (3) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 21, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following "which occurred on or after January 1, 1982,"

Conditions of Probation: Second Offense Within Seven Years

- If the court grants probation to any person punished under Section 23540, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to either subdivision (a) or
- (a) Be confined in the county jail for at least 10 days but not more than one year, and pay a fine of at least three hundred ninety dollars (\$390), but not more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (3) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.
 - (b) All of the following:
- (1) Be confined in the county jail for at least 96 hours, but not more than one year. A sentence of 96 hours of confinement shall be served in two increments consisting of a continuous 48 hours each. The two 48-hour

increments may be served nonconsecutively.

- (2) Pay a fine of at least three hundred ninety dollars (\$390), but not more than one thousand dollars (\$1,000).
- Have the privilege to operate a motor vehicle be restricted by the Department of Motor Vehicles pursuant to Section 13352.5. Until all conditions prescribed in this section are met, the person's driving privilege is suspended pursuant to paragraph (3) of subdivision (a) of Section 13352. This paragraph does not apply if the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement prescribed in Section 15278.
 - (4) Either of the following:
- (A) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.
- (B) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation.
- (c) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until the person has provided proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

Amended Ch. 272, Stats. 1993. Effective August 2, 1993. Amended Sec. 1, Ch. 493, Stats. 1997. Effective January 1, 1998.

Amended Sec. 13.5, Ch. 756, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Supersedes Ch. 661.

Amended and renumbered from 23166 Sec. 21, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1, 1999.

Amended Sec. 22, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material.

Penalty: Third Conviction Within Seven Years

- 23546. (a) If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of two separate violations of Section 23103, as specified in Section 23103.5, () ¹ 23152, or 23153, or any combination thereof, which resulted in convictions, that person shall be punished by imprisonment in the county jail for not less than 120 days nor more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be revoked **by the Department of Motor Vehicles** as required in paragraph (5) of subdivision (a) of Section 13352. The court shall require the person to surrender his or her driver's license to the court in accordance with Section 13550.
- (b) Any person convicted of a violation of Section 23152 punishable under this section shall be designated as () 2 **a** habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Amended Sec. 34, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999. Amended Sec. 23, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following:

- 1. "which occurred on or after January 1, 1982,"
- 2. "an'

Conditions of Probation: Third Conviction Within Seven Years

23548. (a) If the court grants probation to any person punished under Section 23546, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least 120 days but not more than one year and pay a fine of at least three hundred ninety dollars (\$390) but not more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (5) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

- (b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23546, the court may order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to () Section 11836 of the Health and Safety Code. In lieu of the minimum term of imprisonment specified in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the driving-under-the-influence program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.
- (c) In addition to the provisions of Section 23600 and subdivision (a), if the court grants probation to any person punished under Section 23546 who has not previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562, and unless the person is ordered to participate in and complete a *driving-under-the-influence* program under subdivision (b), the court shall impose as a condition of probation that the person, subsequent to the date of the current violation, enroll and participate, for at least 18 months and in a manner satisfactory to the court, in a *driving-under-the-influence* program licensed pursuant to () *Section 11836 of* the

Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. Any person who has previously completed a 12-month or 18-month program licensed pursuant to () **Section 11836 of** the Health and Safety Code shall not be eligible for referral pursuant to this subdivision unless a 30-month licensed **driving-under-the-influence** program is not available for referral in the county of the person's residence or employment. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 24, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following: "Chapter 9 (commencing with Section 11836 of Part 2 of Division 10.5 of"

Penalty: Fourth or Subsequent Conviction Within Seven Years

23550. (a) If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of three or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination thereof, which resulted in convictions, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 180 days nor more than one year, and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) Any person convicted of a violation of Section 23152 punishable under this section shall be designated as () \boldsymbol{a} habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 34.2, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999. Amended Sec. 25, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following "an"

Penalties: Conviction Within 10 Years of Prior DUI Conviction

- 23550.5. (a) A person is guilty of a public offense, punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000) if that person is convicted of a violation of Section 23152 or 23153, and the offense occurred within 10 years of any of the following:
- (1) A prior violation of Section 23152 that was punished as a felony under Section 23550 or this section, or both, or under former Section 23175 or former Section 23175.5, or both.
 - (2) A prior violation of Section 23153 that was punished as a felony.
- (3) A prior violation of paragraph (1) of subdivision (c) of Section 192 of the Penal Code that was punished as a felony.
 - (b) Every person who, having previously been convicted of a violation of

Section 191.5 of the Penal Code or a felony violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is subsequently convicted of a violation of Section 23152 or 23153 is guilty of a public offense punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000).

- (c) The privilege to operate a motor vehicle of a person convicted of a violation that is punishable under subdivision (a) or (b) shall be revoked by the department under paragraph (7) of subdivision (a) of Section 13352, unless paragraph (6) of subdivision (a) of Section 13352 is also applicable, in which case the privilege shall be revoked under that provision. *The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.*
- (d) Any person convicted of a violation of Section 23152 *or 23153* that is punishable under this section shall be designated () *as a* habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation under subdivision (b) of Section 13350.

Amended Sec. 14, Ch. 706, Stats. 1999. Effective October 10, 1999. Amended Sec. 1, Ch. 849, Stats. 2001. Effective January 1, 2002. Amended Sec. 26, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following "an"

Conditions of Probation

23552. (a) If the court grants probation to any person punished under Section 23550, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in a county jail for at least 180 days but not more than one year and pay a fine of at least three hundred ninety dollars (\$390) but not more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352. *The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.*

(b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23550, the court may order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to () 1 Section 11836 of the Health and Safety Code. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined

pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

(c) In addition to the provisions of Section 23600 and subdivision (a), if the court grants probation to any person punished under Section 23550 who has not previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562, and unless the person is ordered to participate in, and complete, a program under subdivision (b), the court shall impose as a condition of probation that the person, subsequent to the date of the current violation, enroll in and participate, for at least 18 months and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to () 1 Section 11836 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. Any person who has previously completed a 12-month or 18-month driving-under-the*influence* program licensed pursuant to () ¹ **Section 11836 of** the Health and Safety Code shall not be eligible for referral pursuant to this subdivision unless a 30-month *driving-under-the-influence program* licensed () ² pursuant to Section 11836 of the Health and Safety Code is not available for referral in the county of the person's residence or employment. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 35.7, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999. Amended Sec. 27, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following:

1. "Chapter 9 (commencing with Section 11836 of Part 2 of Division 10.5 of"

2. "program"

Article3. Penalties for a Violation of Section 23153

Penalties: First Conviction

23554. If any person is convicted of a first violation of Section 23153, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 90 days nor more than one year, and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (2) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 28, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material.

Conditions of Probation: First Conviction

23556. (a) If the court grants probation to any person punished under Section 23554, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be confined in the county jail for at

least five days but not more than one year and pay a fine of at least three hundred ninety dollars (\$390) but not more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (2) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

- (b) (1) In any county where the county alcohol program administrator has certified, and the board of supervisors has approved, such a program or programs, the court shall also impose as a condition of probation that the driver shall participate in, and successfully complete, an alcohol and other drug education and counseling program, established pursuant to Section 11837.3 of the Health and Safety Code, as designated by the court.
- (2) In any county where the board of supervisors has approved and the State Department of Alcohol and Drug Programs has licensed an alcohol and other drug education and counseling program, the court shall also impose as a condition of probation that the driver enroll in, participate in, and successfully complete, () *driving-under-the-influence program licensed pursuant to Section 11836* of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court.
- (c) (1) The court shall revoke the person's probation pursuant to Section 23602, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b).
- (2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the department and with the Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (A) failure to enroll in, or failure to successfully complete, the program, or (B) successful completion of the program as ordered.
- (d) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until the person has provided proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 29, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following "an alcohol and other drug education and counseling program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5"

Multiple Victims: Enhanced Penalty

23558. Any person who proximately causes bodily injury or death to more than one victim in any one instance of driving in violation of Section 23153 of this code or in violation of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, shall, upon a felony conviction, and notwithstanding subdivision (g) of Section 1170.1 of the Penal Code, receive an enhancement of one year in the state prison for each additional injured victim. The enhanced sentence provided for in this section shall not be imposed unless the fact of the bodily injury to each additional victim is charged in the accusatory pleading and admitted or found to be true by the trier of fact. The maximum number of one year enhancements which may be imposed pursuant to this section is three.

Notwithstanding any other provision of law, the court may strike the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 15, Ch. 706, Stats. 1999. Effective October 10, 1999.

Penalty: Second Conviction Within Seven Years

23560. If any person is convicted of a violation of Section 23153 and the offense occurred within seven years of a separate violation of Section 23103, as specified in Section 23103.5, 23152, or 23153 which resulted in a conviction, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 120 days nor more than one year, and by a fine of not less than three hundred ninety dollars (\$390) nor more than five thousand dollars (\$5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (4) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 30, Ch. 545, Stats. 2002. Effective January 1, 2003. The 2002 amendment added the italicized material.

Conditions of Probation: Second Offense Within Seven Years

- 23562. If the court grants probation to any person punished under Section 23560, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to either subdivision (a) or (b), as follows:
- (a) Be confined in the county jail for at least 120 days and pay a fine of at least three hundred ninety dollars (\$390), but not more than five thousand dollars (\$5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (4) of subdivision (a) of Section 13352. *The court shall require the person to surrender the driver's license to the court in accordance with Section* 13550.
 - (b) All of the following:
- (1) Be confined in the county jail for at least 30 days, but not more than one year.
- (2) Pay a fine of at least three hundred ninety dollars (\$390), but not more than one thousand dollars (\$1,000).
- (3) () *The* privilege to operate a motor vehicle *shall be* revoked by the Department of Motor Vehicles under paragraph (4) of subdivision (a) of Section 13352. *The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.*
 - (4) Either of the following:
- (A) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a *driving-under-the-influence* program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.
- (B) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a *driving-under-the-influence* program licensed pursuant to Section 11836

of the Health and Safety Code, if available in the county of the person's residence or employment. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation.

(c) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until the person has provided proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

Amended Ch. 272, Stats. 1993. Effective August 2, 1993.

Amended Sec. 4, Ch. 493, Stats. 1997. Effective January 1, 1998. Amended Sec. 15, Ch. 756, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Supersedes Ch. 118.

Amended and renumbered from 23186 Sec. 22, Ch. 22, Stats. 1999. Effective May 26, 1999. Op-

Amended Sec. 31, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following "Have the"

Penalty: Third or Subsequent Conviction Within Seven Years

(a) If any person is convicted of a violation of Section 23153 and the offense occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, which resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars (\$1,015) nor more than five thousand dollars (\$5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to

the court in accordance with Section 13550.

(b) If any person is convicted of a violation of Section 23153, and the act or neglect proximately causes great bodily injury, as defined in Section 12022.7 of the Penal Code, to any person other than the driver, and the offense occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, which resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars (\$1,015) nor more than five thousand dollars (\$5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352.

The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(c) If any person is convicted under subdivision (b), and the offense for which the person is convicted occurred within seven years of four or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, that resulted in convictions, that person shall, in addition and consecutive to the sentences imposed under subdivision (b), be punished by an additional term of imprisonment in the state prison for three years.

The enhancement allegation provided in this subdivision shall be pleaded and proved as provided by law.

(d) Any person convicted of Section 23153 punishable under this section shall be designated as () 1 a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

(e) Any person confined in state prison under this section shall be ordered by the court to participate in an alcohol or drug program, or both, that is available at the prison during the person's confinement. Completion of an alcohol or drug program under this section does not meet the program completion requirement of paragraph (6) of subdivision (a) of Section 13352, unless the drug or alcohol program is licensed under () ² **Section 11836 of** the Health and Safety Code, or is a program specified in Section 8001 of the Penal Code.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 36, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999. Amended Sec. 32, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following:

1 "an"

2. "Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of"

Conditions of Probation: Third or Subsequent Conviction Within Seven Years

- 23568. (a) If the court grants probation to any person punished under Section 23566, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least one year, that the person pay a fine of at least three hundred ninety dollars (\$390) but not more than five thousand dollars (\$5,000), and that the person make restitution or reparation pursuant to Section 1203.1 of the Penal Code. The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.
- (b) In addition to Section 23600 and subdivision (a), if the court grants probation to any person punished under Section 23566, the court shall impose as a condition of probation that the person enroll in and complete, subsequent to the date of the underlying violation and in a manner satisfactory to the court, an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety **Code** or, if available in the county of the person's residence or employment, a 30-month *driving-under-the-influence* program licensed pursuant to **Section 11836** of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a minimum condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. Except as provided in this subdivision, if the court grants probation under this section, the court shall order the treatment prescribed by this subdivision, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable

all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (6) of subdivision (a) of Section 13352.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 37, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999. Amended Sec. 33, Ch. 545, Stats. 2002. Effective January 1, 2003.

The 2002 amendment added the italicized material, and at the point(s) indicated, deleted the following "Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5"

Article4. Additional Punishments

Minor Passenger: Enhanced Penalty

- 23572. (a) If any person is convicted of a violation of Section 23152 and a minor under 14 years of age was a passenger in the vehicle at the time of the offense, the court shall impose the following penalties in addition to any other penalty prescribed:
- (1) If the person is convicted of a violation of Section 23152 punishable under Section 23536, the punishment shall be enhanced by an imprisonment of 48 continuous hours in the county jail, whether or not probation is granted, no part of which shall be stayed.
- (2) If a person is convicted of a violation of Section 23152 punishable under Section 23540, the punishment shall be enhanced by an imprisonment of 10 days in the county jail, whether or not probation is granted, no part of which may be stayed.
- (3) If a person is convicted of a violation of Section 23152 punishable under Section 23546, the punishment shall be enhanced by an imprisonment of 30 days in the county jail, whether or not probation is granted, no part of which may be stayed.
- (4) If a person is convicted of a violation of Section 23152 which is punished as a misdemeanor under Section 23550, the punishment shall be enhanced by an imprisonment of 90 days in the county jail, whether or not probation is granted, no part of which may be stayed.
- (b) The driving of a vehicle in which a minor under 14 years of age was a passenger shall be pled and proven.
- (c) No punishment enhancement shall be imposed pursuant to this section if the person is also convicted of a violation of Section 273a of the Penal Code arising out of the same facts and incident.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 38, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999.

Article5. Additional Penalties and Sanctions

Authorized and Mandatory Installation of Ignition Interlock Device

23575. (a) (1) In addition to any other provisions of law, the court may require that any person convicted of a first offense violation of Section 23152 or 23153 to install a certified ignition interlock device on any vehicle that the person owns or operates and prohibit that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device. The court shall give heightened consideration to applying this sanction to first offense violators with 0.20 percent or more, by weight, of alcohol in his or her blood at arrest, or with two or more prior moving traffic violations, or of persons who refused the chemical tests at arrest. If the court orders the ignition interlock device restriction, the term shall be determined by the court for a period not to exceed three years from the date

of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(2) The court shall require any person convicted of a violation of Section 14601.2 to install an ignition interlock device on any vehicle that the person owns or operates and prohibit the person from operating a motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(b) The court shall include on the abstract of conviction or violation submitted to the Department of Motor Vehicles under Section 1803 or 1816, the requirement and term for the use of a certified ignition interlock device. The records of the department shall reflect mandatory use of the device for the term ordered by the court.

- (c) The court shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.
- (d) Any person whose driving privilege is restricted by the court pursuant to this section shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device. The installer shall notify the court if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. There is no obligation for the installer to notify the court if the person has complied with all of the requirements of this article.
- (e) The court shall monitor the installation and maintenance of any ignition interlock device restriction ordered pursuant to subdivision (a) or (*J*). If any person fails to comply with the court order, the court shall give notice of the fact to the department pursuant to Section 40509.1.
- (f) (1) Pursuant to Section 13352, if any person is convicted of a violation of Section 23152 or 23153, and the offense occurred within seven years of one or more separate violations of Section 23152 or 23153 that resulted in a conviction, the person may apply to the Department of Motor Vehicles for a restricted driver's license pursuant to Section 13352 that prohibits the person from operating a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, certified pursuant to Section 13386. The restriction shall remain in effect for at least the remaining period of the original suspension or revocation and until all reinstatement requirements in Section 13352 are met.
- (2) Pursuant to subdivision (g), the Department of Motor Vehicles shall immediately terminate the restriction issued pursuant to Section 13352 and shall immediately suspend or revoke the privilege to operate a motor vehicle of any person who attempts to remove, bypass, or tamper with the device, who has the device removed prior to the termination date of the restriction, or who fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device ordered pursuant to Section 13352. The privilege shall remain suspended or revoked for the

remaining period of the originating suspension or revocation and until all reinstatement requirements in Section 13352 are met.

- (g) Any person whose driving privilege is restricted by the Department of Motor Vehicles pursuant to Section 13352 shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate the device and monitor the operation of the device. The installer shall notify the Department of Motor Vehicles if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. There is no obligation on the part of the installer to notify the department or the court if the person has complied with all of the requirements of this section.
- (h) Nothing in this section permits a person to drive without a valid driver's license.
- (i) The Department of Motor Vehicles shall include information along with the order of suspension or revocation for repeat offenders informing them that after a specified period of suspension or revocation has been completed, the person may either install an ignition interlock device on any vehicle that the person owns or operates or remain with a suspended or revoked driver's license.
- (j) Pursuant to this section, out-of-state residents who otherwise would qualify for an ignition interlock device restricted license in California shall be prohibited from operating a motor vehicle in California unless that vehicle is equipped with a functioning ignition interlock device. No ignition interlock device is required to be installed on any vehicle owned by the defendant that is not driven in California.
- (k) If a person has a medical problem that does not permit the person to breathe with sufficient strength to activate the device, then that person shall only have the suspension option.
- (1) This section does not restrict a court from requiring installation of an ignition interlock device and prohibiting operation of a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device for any persons to whom subdivision (a) or (b) does not apply. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.
- (m) For purposes of this section, "vehicle" does not include a motorcycle until the state certifies an ignition interlock device that can be installed on a motorcycle. Any person subject to an ignition interlock device restriction shall not operate a motorcycle for the duration of the ignition interlock device restriction period.
- (n) For purposes of this section, "owned" means solely owned or owned in conjunction with another person or legal entity. For purposes of this section, "operates" includes operating vehicles that are not owned by the person subject to this section.
- (o) For the purposes of this section, bypass includes, but is not limited to, either of the following:
- Any combination of failing or not taking the ignition interlock device rolling retest three consecutive times.
- (2) Any incidence of failing or not taking the ignition interlock device rolling retest, when not followed by an incidence of passing the ignition

interlock rolling retest prior to turning the vehicles's engine off.

Amended Ch. 1244, Stats. 1993. Effective January 1, 1994. Amended Ch. 1237, Stats. 1994. Effective September 30, 1994.

Amended Sec. 21, Ch. 756, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Su-

Amended and renumbered from 23246 Sec. 27, Ch. 22, Stats. 1999. Effective May 25, 1999. Amended Sec. 11, Ch. 1064, Stats. 2000. Effective September 30, 2000. Amended Sec. 23, Ch. 473, Stats. 2001. Effective January 1, 2002.

Exception for Operation of Vehicle

- 23576. (a) Notwithstanding Section 23575, if a person is required to operate a motor vehicle in the course and scope of his or her employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified by the person that the person's driving privilege has been restricted pursuant to Section 23575 and if the person has proof of that notification in his or her possession, or if the notice, or a facsimile copy thereof, is with the vehicle.
- (b) A motor vehicle owned by a business entity that is all or partly owned or controlled by a person otherwise subject to Section 23575, is not a motor vehicle owned by the employer subject to the exemption in subdivision (a).

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Chemical Testing: Refusal to Take or Failure to Complete: Enhanced Penalties

- 23577. (a) If any person is convicted of a violation of Section 23152 or 23153, and at the time of the arrest leading to that conviction that person willfully refused a peace officer's request to submit to, or willfully failed to complete, the chemical test or tests pursuant to Section 23612, the court shall impose the following penalties:
- (1) If the person is convicted of a first violation of Section 23152, notwithstanding any other provision of subdivision (a) of Section 23538, the terms and conditions of probation shall include the conditions in paragraph (1) of subdivision (a) of Section 23538.
- (2) If the person is convicted of a first violation of Section 23153, the punishment shall be enhanced by an imprisonment of 48 continuous hours in the county jail, whether or not probation is granted and no part of which may be stayed, unless the person is sentenced to, and incarcerated in, the state prison and the execution of that sentence is not stayed.
- (3) If the person is convicted of a second violation of Section 23152, punishable under Section 23540, or a second violation of Section 23153, punishable under Section 23560, the punishment shall be enhanced by an imprisonment of 96 hours in the county jail, whether or not probation is granted and no part of which may be stayed, unless the person is sentenced to, and incarcerated in, the state prison and execution of that sentence is not staved.
- (4) If the person is convicted of a third violation of Section 23152, punishable under Section 23546, the punishment shall be enhanced by an imprisonment of 10 days in the county jail, whether or not probation is granted and no part of which may be stayed.
- (5) If the person is convicted of a fourth or subsequent violation of Section 23152, punishable under Section 23550 or 23550.5, the punishment shall be enhanced by imprisonment of 18 days in the county jail, whether or not probation is granted and no part of which may be stayed.
- (b) The willful refusal or failure to complete the chemical test required pursuant to Section 23612 shall be pled and proven.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 39, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999.

Excessive Blood Alcohol or Refusal to Take Chemical Testing: Enhanced Penalties

23578. In addition to any other provision of this code, if any person is convicted of a violation of Section 23152 or 23153, the court shall consider a concentration of alcohol in the person's blood of 0.20 percent or more, by weight, or the refusal of the person to take a chemical test as a special factor which may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Repeat Offenders: Mandatory Imprisonment

(a) If any person is convicted of a violation of Section 23152 or 23153 and the offense was a second or subsequent offense punishable under Section 23540, 23546, 23550, 23550.5, 23560, or 23566, the court shall require that any term of imprisonment that is imposed include at least one period of not less than 48 consecutive hours of imprisonment or, in the alternative and notwithstanding Section 4024.2 of the Penal Code, that the person serve not less than 10 days of community service.

(b) Notwithstanding any other provision of law, except Section 2900.5 of the Penal Code, unless the court expressly finds in the circumstances that the punishment inflicted would be cruel or unusual punishment prohibited by Section 17 of ArticleI of the California Constitution, no court or person to whom a person is remanded for execution of sentence shall release, or permit the release of, a person from the requirements of subdivision (a), including, but not limited to, any work-release program, weekend service of sentence program, diversion or treatment program, or otherwise.

(c) For the purposes of this section, "imprisonment" means confinement in a jail, in a minimum security facility, or in an inpatient rehabilitation facility, as provided in Part 1309 (commencing with Section 1309.1) of Title 23 of the Code of Federal Regulations. ()

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Amended Sec. 223, Ch. 664, Stats. 2002. Effective January 1, 2003.

The 2002 amendment at the point(s) indicated, deleted the following "(d) This section shall become operative only if, and upon the date of the certification by, the Department of Motor Vehicles to the Secretary of State that California has submitted a completed application for federal Title 408 grant programs funds pursuant to that Part 1309."

Speeding: Additional Penalty

- 23582. (a) Any person who drives a vehicle 30 or more miles per hour over the maximum, prima facie, or posted speed limit on a freeway, or 20 or more miles per hour over the maximum, prima facie, or posted speed limit on any other street or highway, and in a manner prohibited by Section 23103 during the commission of a violation of Section 23152 or 23153 shall, in addition to the punishment prescribed for that person upon conviction of a violation of Section 23152 or 23153, be punished by an additional and consecutive term of 60 days in the county jail.
- (b) If the court grants probation or suspends the execution of sentence, it shall require as a condition of probation or suspension that the defendant serve 60 days in the county jail, in addition and consecutive to any other sentence prescribed by this chapter.
- (c) On a first conviction under this section, the court shall order the driver to participate in, and successfully complete, an alcohol or drug education and counseling program, or both an alcohol and a drug education and counseling program. Except in unusual cases where the interests of justice would be served, a finding making this section applicable to a defendant shall not be stricken pursuant to Section 1385 of the Penal Code or any other provision of

law. If the court decides not to impose the additional and consecutive term, it shall specify on the court record the reasons for that order.

(d) The additional term provided in this section shall not be imposed unless the facts of driving in a manner prohibited by Section 23103 and driving the vehicle 30 or more miles per hour over the maximum, prima facie, or posted speed limit on a freeway, or 20 or more miles per hour over the maximum, prima facie, or posted speed limit on any other street or highway, are charged in the accusatory pleading and admitted or found to be true by the trier of fact. A finding of driving in that manner shall be based on facts in addition to the fact that the defendant was driving while under the influence of alcohol, any drug, or both, or with a specified percentage of alcohol in the blood.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Article6. Additional Court-Imposed Orders and Directions

Impounding Vehicles

- 23592. (a) (1) Whenever a person is convicted of any of the following offenses committed while driving a motor vehicle of which he or she is the owner, the court, at the time sentence is imposed on the person, may order the motor vehicle impounded for a period of not more than six months for a first conviction, and not more than 12 months for a second or subsequent conviction:
 - (A) Driving with a suspended or revoked driver's license.
- (B) A violation of Section 2800.2 resulting in an accident or Section 2800.3, if either violation occurred within seven years of one or more separate convictions for a violation of any of the following:
- (i) Section 23103, if the vehicle involved in the violation was driven at a speed of 100 or more miles per hour.
 - (ii) Section 23152.
 - (iii) Section 23153.
 - (iv) Section 191.5 of the Penal Code.
 - (v) Subdivision (c) of Section 192 of the Penal Code.
- (2) The cost of keeping the vehicle is a lien on the vehicle pursuant to Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code.
- (b) Notwithstanding subdivision (a), any motor vehicle impounded pursuant to this section which is subject to a chattel mortgage, conditional sale contract, or lease contract shall be released by the court to the legal owner upon the filing of an affidavit by the legal owner that the chattel mortgage, conditional sale contract, or lease contract is in default and shall be delivered to the legal owner upon payment of the accrued cost of keeping the vehicle.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Impoundment of Vehicles

23594. (a) Except as provided in subdivision (b), the interest of any registered owner of a motor vehicle that has been used in the commission of a violation of Section 23152 or 23153 for which the owner was convicted, is subject to impoundment as provided in this section. Upon conviction, the court may order the vehicle impounded at the registered owner's expense for not less than one nor more than 30 days.

If the offense occurred within five years of a prior offense which resulted in conviction of a violation of Section 23152 or 23153, the prior conviction shall also be charged in the accusatory pleading and if admitted or found to be true by the jury upon a jury trial or by the court upon a court trial, the

court shall, except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner's expense for not less than one nor more than 30 days.

If the offense occurred within five years of two or more prior offenses which resulted in convictions of violations of Section 23152 or 23153, the prior convictions shall also be charged in the accusatory pleading and if admitted or found to be true by the jury upon a jury trial or by the court upon a court trial, the court shall, except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner's expense for not less than one nor more than 90 days.

For the purposes of this section, the court may consider in the interests of justice factors such as whether impoundment of the vehicle would result in a loss of employment of the offender or the offender's family, impair the ability of the offender or the offender's family to attend school or obtain medical care, result in the loss of the vehicle because of inability to pay impoundment fees, or unfairly infringe upon community property rights or any other facts the court finds relevant. When no impoundment is ordered in an unusual case pursuant to this section, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(b) No vehicle which may be lawfully driven on the highway with a class C or class M driver's license, as specified in Section 12804.9, is subject to impoundment under this section if there is a community property interest in the vehicle owned by a person other than the defendant and the vehicle is the sole vehicle available to the defendant's immediate family which may be operated on the highway with a class C or class M driver's license.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Vehicle Declared Nuisance: Sale of Vehicle

- 23596. (a) (1) Upon its own motion or upon motion of the prosecutor in a criminal action for a violation of any of the following offenses, the court with jurisdiction over the offense, notwithstanding Section 86 of the Code of Civil Procedure and any other provision of law otherwise prescribing the jurisdiction of the court based upon the value of the property involved, may declare the motor vehicle driven by the defendant to be a nuisance if the defendant is the registered owner of the vehicle:
- (A) A violation of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code.
- (B) A violation of Section 23152 which occurred within seven years of two or more separate offenses of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, or Section 23152 or 23153, or any combination thereof, which resulted in convictions.
- (C) A violation of Section 23153 which occurred within seven years of one or more separate offenses of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, or Section 23152 or 23153, which resulted in convictions.
- (2) The court or the prosecutor shall give notice of the motion to the defendant, and the court shall hold a hearing before a motor vehicle may be declared a nuisance under this section.
- (b) Except as provided in subdivision (g), upon the conviction of the defendant and at the time of pronouncement of sentence, the court with jurisdiction over the offense shall order any vehicle declared to be a nuisance pursuant to subdivision (a) to be sold. Any vehicle ordered to be sold pursuant to this subdivision shall be surrendered to the sheriff of the county

or the chief of police of the city in which the violation occurred. The officer to whom the vehicle is surrendered shall promptly ascertain from the department the names and addresses of all legal and registered owners of the vehicle and, within five days of receiving that information, shall send by certified mail a notice to all legal and registered owners of the vehicle other than the defendant, at the addresses obtained from the department, informing them that the vehicle has been declared a nuisance and will be sold or otherwise disposed of pursuant to this section and of the approximate date and location of the sale or other disposition. The notice shall also inform any legal owner of its right to conduct the sale pursuant to subdivision (c).

- (c) Any legal owner who is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed finance institution legally operating in this state, or the agent of that legal owner, may take possession and conduct the sale of the vehicle declared to be a nuisance if it notifies the officer to whom the vehicle is surrendered of its intent to conduct the sale within 15 days of the mailing of the notice pursuant to subdivision (b). Sale of the vehicle pursuant to this subdivision may be conducted at the time, in the manner, and on the notice usually given for the sale of repossessed or surrendered vehicles. The proceeds of any sale conducted by the legal owner shall be disposed of as provided in subdivision (e). A notice pursuant to this subdivision may be presented in person, by certified mail, by facsimile transmission, or by electronic mail. The agent of a legal owner acting pursuant to this subdivision shall be licensed, or exempt from licensure, pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code.
- (d) If the legal owner or the agent of the legal owner does not notify the officer to whom the vehicle is surrendered of its intent to conduct the sale as provided in subdivision (c), the officer shall offer the vehicle for sale at public auction within 60 days of receiving the vehicle. At least 10 days but not more than 20 days prior to the sale, not counting the day of the sale, the officer shall give notice of the sale by advertising once in a newspaper of general circulation published in the city or county, as the case may be, in which the vehicle is located, which notice shall contain a description of the make, year, model, identification number, and license number of the vehicle and the date, time, and location of the sale. For motorcycles, the engine number shall also be included. If there is no newspaper of general circulation published in the county, notice shall be given by posting a notice of sale containing the information required by this subdivision in three of the most public places in the city or county in which the vehicle is located, and at the place where the vehicle is to be sold, for 10 consecutive days prior to and including the day of the sale.
- (e) The proceeds of a sale conducted pursuant to this section shall be disposed of in the following priority:
- (1) To satisfy the costs of the sale, including costs incurred with respect to the taking and keeping of the vehicle pending sale.
- (2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner remaining as of the date of the sale, including accrued interest or finance charges and delinquency charges.
- (3) To the holder of any subordinate lien or encumbrance on the vehicle to satisfy any indebtedness so secured if written notification of demand is received before distribution of the proceeds is completed. The holder of a subordinate lien or encumbrance, if requested, shall reasonably furnish reasonable proof of its interest and, unless it does so on request, is not entitled to distribution pursuant to this paragraph.
 - (4) To any other person who can establish an interest in the vehicle,

including a community property interest, to the extent of his or her provable interest.

- (5) If the vehicle was forfeited as a result of a felony violation of Section 191.5 of the Penal Code, or of Section 23153 that resulted in serious bodily injury to any person other than the defendant, the balance, if any, to the city or county in which the violation occurred, to be deposited in its general fund.
- (6) Except as provided in paragraph (5), the balance, if any, to the city or county in which the violation occurred, to be expended for community-based adolescent substance abuse treatment services.

The person conducting the sale shall disburse the proceeds of the sale as provided in this subdivision, and provide a written accounting regarding the disposition to all persons entitled to or claiming a share of the proceeds, within 15 days after the sale is conducted.

- (f) If the vehicle to be sold under this section is not of the type that can readily be sold to the public generally, the vehicle shall be destroyed or donated to an eleemosynary institution.
- (g) No vehicle shall be sold pursuant to this section in either of the following circumstances:
- (1) The vehicle is stolen, unless the identity of the legal and registered owners of the vehicle cannot be reasonably ascertained.
- (2) The vehicle is owned by another, or there is a community property interest in the vehicle owned by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family that may be operated on the highway with a class 3 or class 4 driver's license.
- (h) The Legislature finds and declares it to be the public policy of this state that no policy of insurance shall afford benefits that would alleviate the financial detriment suffered by any person as a direct or indirect result of a confiscation of a vehicle pursuant to this section.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 7, Ch. 582, Stats. 1998. Effective January 1, 1999. Repealed Sec. 40.2 and added Sec. 40.4, Ch. 22, Stats. 1999, without change in text. Effective May 26, 1999. Add operative July 1, 1999.

Article7. Alternative to Alcohol or Drug Education Program

Live-in Alternative to Alcohol or Drug Education Program

23598. In lieu of the alcohol or drug education program prescribed by Section 23538, 23542, 23548, 23552, 23556, 23562, or 23568, a court may impose, as a condition of probation, that the person complete, subsequent to the underlying conviction, a program specified in Section 8001 of the Penal Code, if the person consents and has been accepted into that program. Acceptance into that program shall be verified by a certification, under penalty of perjury, by the director of the program.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

CHAPTER 3. PROBATION

Sentencing: Minimum Probation Conditions

23600. (a) If any person is convicted of a violation of Section 23152 or 23153, the court shall not stay or suspend pronouncement of sentencing, and shall pronounce sentence in conjunction with the conviction in a reasonable time, including time for receipt of any presentence investigation report ordered pursuant to Section 23655.

- (b) If any person is convicted of a violation of Section 23152 or 23153 and is granted probation, the terms and conditions of probation shall include, but not be limited to, the following:
 - (1) Notwithstanding Section 1203a of the Penal Code, a period of

probation not less than three nor more than five years; provided, however, that if the maximum sentence provided for the offense may exceed five years in the state prison, the period during which the sentence may be suspended and terms of probation enforced may be for a longer period than three years but may not exceed the maximum time for which sentence of imprisonment may be pronounced.

- (2) A requirement that the person shall not drive a vehicle with any measurable amount of alcohol in his or her blood.
- (3) A requirement that the person, if arrested for a violation of Section 23152 or 23153, shall not refuse to submit to a chemical test of his or her blood, breath, or urine, pursuant to Section 23612, for the purpose of determining the alcoholic content of his or her blood.
 - (4) A requirement that the person shall not commit any criminal offense.
- (c) The court shall not absolve a person who is convicted of a violation of Section 23152 or 23153 from the obligation of spending the minimum time in confinement, if any, or of paying the minimum fine imposed by law.
- (d) In addition to any other provision of law, if any person violates paragraph (2) or (3) of subdivision (b) and the person had a blood alcohol concentration of over 0.04 percent as determined by a chemical test, the court shall revoke or terminate the person's probation as provided by Section 23602, regardless of any other proceeding, and shall only grant a new term of probation of not more than five years on the added condition that the person be confined in the county jail for not less than 48 hours for each of these violations of probation, except in unusual cases where the interests of justice would best be served if this additional condition were not imposed.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 40.6, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999.

Probation: Payment of Money

- 23601. (a) Except as provided in subdivision (c), an order to pay any fine, restitution, or assessment, imposed as a condition of the grant of probation or as part of a judgment of conditional sentence for a violation of Section 23152 or 23153, may be enforced in the same manner provided for the enforcement of money judgments.
- (b) A willful failure to pay any fine, restitution, or assessment during the term of probation is a violation of the terms and conditions of probation.
- (c) If an order to pay a fine as a condition of probation is stayed, a writ of execution shall not be issued, and any failure to pay the fine is not willful, until the stay is removed.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Penalty: Violation of Probation

23602. Except as otherwise expressly provided in this code, if a person has been convicted of a violation of Section 23152 or 23153 and the court has suspended execution of the sentence for that conviction and has granted probation, and during the time of that probation, the person is found by the court to have violated a required term or condition of that probation, the court shall revoke the suspension of sentence, revoke or terminate probation, and shall proceed in the manner provided in subdivision (c) of Section 1203.2 of the Penal Code.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 41, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999.

CHAPTER 4. PROCEDURES

Article1. General Provisions

Blood-Alcohol Level: Presumptions Affecting Burden of Proof

23610. (a) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of an alcoholic beverage in violation of subdivision (a) of Section 23152 or subdivision (a) of Section 23153, the amount of alcohol in the person's blood at the time of the test as shown by chemical analysis of that person's blood, breath, or urine shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent, by weight, of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.

- (2) If there was at that time 0.05 percent or more but less than 0.08 percent, by weight, of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.
- (3) If there was at that time 0.08 percent or more, by weight, of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.
- (b) Percent, by weight, of alcohol in the person's blood shall be based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.
- (c) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Implied Consent For Chemical Testing

- 23612. (a) (1) (A) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.
- (B) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153.
- (C) The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.
- (D) The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, and (i) the suspension of the person's privilege to operate a motor vehicle for a period of one year, (ii) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within seven years of a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5

or paragraph (3) of subdivision (c) of Section 192 of the Penal Code that resulted in a conviction, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 for an offense that occurred on a separate occasion, or (iii) the revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, that resulted in convictions, or if the person's privilege to operate a motor vehicle has been suspended or revoked two or more times pursuant to Section 13353, 13353.1, or 13353.2 for offenses that occurred on separate occasions, or if there is any combination of those convictions or administrative suspensions or revocations.

- (2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.
- (B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice.
- (C) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person has the choice of submitting to and completing a blood or urine test, and the officer shall advise the person that he or she is required to submit to an additional test and that he or she may choose a test of either blood or urine. If the person arrested either is incapable, or states that he or she is incapable, of completing either chosen test, the person shall submit to and complete the other remaining test.
- (3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of those tests that are available at the facility to which that person has been transported. In that case, the officer shall advise the person of those tests that are available at the medical facility and that the person's choice is limited to those tests that are available.
- (4) The officer shall also advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.
 - (5) Any person who is unconscious or otherwise in a condition rendering

him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. Any person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer.

- (b) Any person who is afflicted with hemophilia is exempt from the blood test required by this section.
- (c) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test required by this section.
- (d) (1) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood or breath for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.
- (2) If a blood or breath test is not available under subparagraph (A) of paragraph (1) of subdivision (a), or under subparagraph (A) of paragraph (2) of subdivision (a), or under paragraph (1) of this subdivision, the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.
- (e) If the person, who has been arrested for a violation of Section 23140, 23152, or 23153, refuses or fails to complete a chemical test or tests, or requests that a blood or urine test be taken, the peace officer, acting on behalf of the department, shall serve the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person. The notice shall be on a form provided by the department.
- (f) If the peace officer serves the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle, the peace officer shall take possession of any driver's license issued by this state which is held by the person. The temporary driver's license shall be an endorsement on the notice of the order of suspension and shall be valid for 30 days from the date of arrest.
- (g) (1) The peace officer shall immediately forward a copy of the completed notice of suspension or revocation form and any driver's license taken into possession under subdivision (f), with the report required by Section 13380, to the department. If the person submitted to a blood or urine test, the peace officer shall forward the results immediately to the appropriate forensic laboratory. The forensic laboratory shall forward the results of the chemical tests to the department within 15 calendar days of the date of the arrest.
- (2) (A) Notwithstanding any other provision of law, any document containing data prepared and maintained in the governmental forensic laboratory computerized data base system that is electronically transmitted or retrieved through public or private computer networks to or by the department is the best available evidence of the chemical test results in all administrative proceedings conducted by the department. In order to be admissible as evidence in administrative proceedings, a document described in this subparagraph shall bear a certification by the employee of the department who retrieved the document certifying that the information was

received or retrieved directly from the computerized data base system of a governmental forensic laboratory and that the document accurately reflects the data received or retrieved.

- (B) Notwithstanding any other provision of law, the failure of an employee of the department to certify under subparagraph (A) is not a public offense.
- (h) A preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23140, 23152, or 23153 is a field sobriety test and may be used by an officer as a further investigative tool.
- (i) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

Amended Ch. 272, Stats. 1993. Effective August 2, 1993. Amended Ch. 1244, Stats. 1993. Effective January 1, 1994. Amended Ch. 938, Stats. 1994. Effective September 28, 1994.

Amended Sec. 70, Ch. 1154, Stats. 1996. Effective September 30, 1996.

Amended Sec. 4, Ch. 740, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Supersedes Ch. 118.

Amended and renumbered from 23157Sec. 18.4, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1, 1999.

Amended Sec. 2, Ch. 854, Stats. 1999. Effective October 1, 1999. Supersedes Ch. 853. Amended Sec. 26, Ch. 287, Stats. 2000. Effective January 1, 2001.

Breath and Chemical Testing: Advisement

- 23614. (a) In addition to the requirements of Section 23612, a person who chooses to submit to a breath test shall be advised before or after the test that the breath-testing equipment does not retain any sample of the breath and that no breath sample will be available after the test which could be analyzed later by that person or any other person.
- (b) The person shall also be advised that, because no breath sample is retained, the person will be given an opportunity to provide a blood or urine sample that will be retained at no cost to the person so that there will be something retained that may be subsequently analyzed for the alcoholic content of the person's blood. If the person completes a breath test and wishes to provide a blood or urine sample to be retained, the sample shall be collected and retained in the same manner as if the person had chosen a blood or urine test initially.
- (c) The person shall also be advised that the blood or urine sample may be tested by either party in any criminal prosecution. The failure of either party to perform this test shall place neither a duty upon the opposing party to perform the test nor affect the admissibility of any other evidence of the alcoholic content of the blood of the person arrested.
- (d) No failure or omission to advise pursuant to this section shall affect the admissibility of any evidence of the alcoholic content of the blood of the person arrested.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Article2. Prior and Separate Offenses

Vehicular Manslaughter: Separate Offense

23620. (a) For the purposes of this division, Section 13352, and Chapter 12 (commencing with Section 23100) of Division 11, a separate offense that resulted in a conviction of a violation of subdivision (f) of Section 655 of the Harbors and Navigation Code or of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code is a separate offense of a violation of Section 23153.

(b) For the purposes of this division and Chapter 12 (commencing with Section 23100) of Division 11, and Section 13352, a separate offense that resulted in a conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code is a separate violation of Section 23152.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 43, Ch. 724, Stats. 1999. Effective January 1, 2000.

Prior Convictions: Sentencing

23622. (a) In any case charging a violation of Section 23152 or 23153 and the offense occurred within seven years of one or more separate violations of Section 23103, as specified in Section 23103.5, which occurred on or after January 1, 1982, 23152, or 23153, or any combination thereof, which resulted in convictions, the court shall not strike any separate conviction of those offenses for purposes of sentencing in order to avoid imposing, as part of the sentence or term of probation, the minimum time of imprisonment and the minimum fine, as provided in this chapter, or for purposes of avoiding revocation, suspension, or restriction of the privilege to operate a motor vehicle, as provided in this code.

- (b) In any case charging a violation of Section 23152 or 23153, the court shall obtain a copy of the driving record of the person charged from the Department of Motor Vehicles and may obtain any records from the Department of Justice or any other source to determine if one or more separate violations of Section 23103, as specified in Section 23103.5, which occurred on or after January 1, 1982, 23152, or 23153, or any combination thereof, which resulted in convictions, have occurred within seven years of the charged offense. The court may obtain, and accept as rebuttable evidence, a printout from the Department of Motor Vehicles of the driving record of the person charged, maintained by electronic and storage media pursuant to Section 1801 for the purpose of proving those separate violations.
- (c) If any separate convictions of violations of Section 23152 or 23153 are reported to have occurred within 10 years of the charged offense, the court shall notify each court where any of the separate convictions occurred for the purpose of enforcing terms and conditions of probation pursuant to Section 23602.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Separate Convictions: Constitutional Challenge

23624. Only one challenge shall be permitted to the constitutionality of a separate conviction of a violation of Section 14601, 14601.2, 23152, or 23153, which was entered in a separate proceeding. When a proceeding to declare a separate judgment of conviction constitutionally invalid has been held, a determination by the court that the separate conviction is constitutional precludes any subsequent attack on constitutional grounds in a subsequent prosecution in which the same separate conviction is charged. In addition, any determination that a separate conviction is unconstitutional precludes any allegation or use of that separate conviction in any judicial or

administrative proceeding, and the department shall strike that separate conviction from its records. Pursuant to Section 1803, the court shall report to the Department of Motor Vehicles any determination upholding a conviction on constitutional grounds and any determination that a conviction is unconstitutional.

This section shall not preclude a subsequent challenge to a conviction if, at a later time, a subsequent statute or appellate court decision having retroactive application affords any new basis to challenge the constitutionality of the conviction.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Effect of Conviction in Another Jurisdiction

23626. A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada which, if committed in this state, would be a violation of Section 23152 or 23153 of this code, or Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, is a conviction of Section 23152 or 23153 of this code, or Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code for the purposes of this code.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Article3. Defenses

Entitled to Use Drugs

23630. The fact that any person charged with driving under the influence of any drug or the combined influence of alcoholic beverages and any drug in violation of Section 23152 or 23153 is, or has been entitled to use, the drug under the laws of this state shall not constitute a defense against any violation of the sections.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Article4. Dismissal on the Record

Court Record: Reason for Order or Motion

23635. When an allegation of a violation of Section 23152 is dismissed by the court, an allegation of a different or lesser offense is substituted for an allegation of a violation of Section 23152, or an allegation of a separate conviction is dismissed or stricken, the court shall specify on the record its reason or reasons for the order. The court shall also specify on the record whether the dismissal, substitution, or striking was requested by the prosecution and whether the prosecution concurred in or opposed the dismissal, substitution, or striking.

When the prosecution makes a motion for a dismissal or substitution, or for the striking of a separate conviction, the prosecution shall submit a written statement which shall become part of the court record and which gives the reasons for the motion. The reasons shall include, but need not be limited to, problems of proof, the interests of justice, why another offense is more properly charged, if applicable, and any other pertinent reasons. If the reasons include the "interests of justice," the written statement shall specify all of the factors which contributed to this conclusion.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Article5. Court Restrictions

Program Participation Prior to Proceeding

23640. (a) In any case in which a person is charged with a violation of Section 23152 or 23153, prior to acquittal or conviction, the court shall

neither suspend nor stay the proceedings for the purpose of allowing the accused person to attend or participate, nor shall the court consider dismissal of or entertain a motion to dismiss the proceedings because the accused person attends or participates during that suspension, in any one or more education, training, or treatment programs, including, but not limited to, a driver improvement program, a treatment program for persons who are habitual users of alcohol or other alcoholism program, a program designed to offer alcohol services to problem drinkers, an alcohol or drug education program, or a treatment program for persons who are habitual users of drugs or other drug-related program.

(b) This section shall not apply to any attendance or participation in any education, training, or treatment programs after conviction and sentencing, including attendance or participation in any of those programs as a condition of probation granted after conviction when permitted.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 42, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999.

Article6. Alcohol Assessment

Alcohol Abuse Education and Prevention Assessment

- 23645. (a) Except as otherwise provided in subdivision (c), any person convicted of a violation of Section 23152 or 23153 shall, in addition to any other fine, assessment, or imprisonment imposed pursuant to law, pay an alcohol abuse education and prevention penalty assessment in an amount not to exceed fifty dollars (\$50) for deposit and distribution pursuant to Section 1463.25 of the Penal Code.
- (b) The payment of the penalty assessment under this section shall be ordered upon conviction of a person of a violation of Section 23152 or 23153 irrespective of any other proceeding and, if probation is granted, the payment of the penalty assessment shall also be ordered as a condition of probation, except in unusual cases that are subject to subdivision (d) of Section 1464 of the Penal Code.
- (c) The court shall determine if the defendant has the ability to pay a penalty assessment. If the court determines that the defendant has the ability to pay a penalty assessment, the court may set the amount to be paid and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution. If the court determines that the defendant does not have the ability to pay a penalty assessment, the defendant shall not be required to pay a penalty assessment.
- (d) Five percent of the funds allocated to primary prevention programs to the school and the communities pursuant to subdivision (a) of Section 11802 of the Health and Safety Code shall be used to conduct an annual evaluation. The annual evaluation shall be conducted by the office of the county superintendent of schools in counties where the program is operating in a single county or in the office of the county superintendent of schools in the county designated as the lead county in counties where the program is operating as a consortium of counties. The evaluation shall contain the following:
- (1) A needs assessment evaluation that provides specific data regarding the problem to be resolved.
- (2) A written report of the planning process outlining the deliberations, considerations, and conclusions following a review of the needs assessment.

- (3) An end of fiscal year accountability evaluation that will indicate the program's continuing ability to reach appropriate program beneficiaries, deliver the appropriate benefits, and use funds appropriately.
- (4) An impact evaluation charged with the task of assessing the effectiveness of the program. Guidelines for the evaluation report format and the timeliness for the submission of the report shall be developed by the State Department of Education. Each county shall submit an evaluation report annually to the State Department of Education and the State Department of Education shall write and submit a report to the Legislature and Governor.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

County Alcohol and Drug Problem Assessment Programs

- (a) Each county alcohol program administrator administrator's designee shall develop, implement, operate, and administer an alcohol and drug problem assessment program pursuant to this Article for each person described in subdivision (b). The alcohol and drug problem assessment program may include a referral and client tracking component.
- (b) (1) The court shall order a person to participate in an alcohol and drug problem assessment program pursuant to this section and Sections 23647 to 23649, inclusive, and the related regulations of the State Department of Alcohol and Drug Programs, if the person was convicted of a violation of Section 23152 or 23153 that occurred within seven years of a separate violation of Section 23152 or 23153 and resulted in a conviction, the person was required to attend a licensed program pursuant to a court order, and the person has once failed to comply with the rules and policies of the licensed program, other than a rule relating to the payment of fees, in accordance with the rules and regulations of the state department.
- (2) A court may order any person convicted of a violation of Section 23152 or 23153 to attend an alcohol and drug problem assessment program pursuant to this article.
- (c) The State Department of Alcohol and Drug Programs shall establish minimum specifications for alcohol and other drug problem assessments and reports not later than September 30, 1999.

Amended Sec. 4, Ch. 656, Stats. 1998. Effective January 1, 1999. Supersedes Ch. 118. Amended and renumbered from 23249.52 Sec. 29, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1, 1999.
Amended Sec. 12, Ch. 1064, Stats. 2000. Effective September 30, 2000.

Participation in Program

- (a) Any person convicted of a violation of Section 23152 or 23153 who is required to participate in a county alcohol and drug problem assessment program shall participate in that program.
- (b) Any person convicted of a violation of Section 23103, as specified in Section 23103.5, in a judicial district that participates in a county alcohol and drug problem assessment program pursuant to this article, may be ordered to participate in the program.

Amended Sec. 5, Ch. 656, Stats. 1998. Effective January 1, 1999. Supersedes Ch. 118. Amended and renumbered from 23249.53 Sec. 30, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1, 1999.

Report

- (a) Each county shall prepare, or contract to be prepared, an alcohol and drug problem assessment report on each person described in subdivision (b) of Section 23646.
- (b) The assessment report shall include, if applicable, a recommendation for any additional treatment and the duration of the treatment. The treatment shall be in addition to the education and counseling program

required under Section 11837 of the Health and Safety Code. The assessment report shall be submitted to the court not more than 14 days after the date the assessment was conducted.

- (c) Within 30 days of the receipt of the report, the court shall order the person to complete the recommendations set forth in the report in satisfaction of, and consistent with, the terms and conditions of probation. If the court elects not to order the completion of the recommended plan, the court shall specify on the record its reason for not adopting these recommendations.
 - (d) This section shall become operative on January 1, 2000.

Added Sec. 7, Ch. 656, Stats. 1998. Effective January 1, 1999.
Amended and renumbered from 23249.54 Sec. 32, Ch. 22, Stats. 1999. Effective May 26, 1999.
Operative January 1, 2000.

Additional Assessments

23649. (a) Notwithstanding any other provision of law, in addition to any other fine or penalty assessment, there shall be levied an assessment of not more than one hundred dollars (\$100) upon every fine, penalty, or forfeiture imposed and collected by the courts for a violation of Section 23152 or 23153 in any judicial district that participates in a county alcohol and drug problem assessment program. An assessment of not more than one hundred dollars (\$100) shall be imposed and collected by the courts from each person convicted of a violation of Section 23103, as specified in Section 23103.5, who is ordered to participate in a county alcohol and drug problem assessment program pursuant to Section 23647.

(b) The court shall determine if the defendant has the ability to pay the assessment. If the court determines that the defendant has the ability to pay the assessment then the court may set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner that the court determines is reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in

restitution.

- (c) Notwithstanding Section 1463 or 1464 of the Penal Code or any other provision of law, all moneys collected pursuant to this section shall be deposited in a special account in the county treasury and shall be used exclusively by the county alcohol program administrator or the administrator's designee to pay for the costs of developing, implementing, operating, maintaining, and evaluating alcohol and drug problem assessment programs.
- (d) On January 15 of each year, the treasurer of each county that administers an alcohol and drug problem assessment program shall determine those moneys in the special account that were not expended during the preceding fiscal year, and shall transfer those moneys to the general fund of the county.
- (e) Any moneys remaining in the special account, if and when the alcohol and drug problem assessment program is terminated, shall be transferred to the general fund of the county.
- (f) The county treasurer shall annually transfer an amount of money equal to the county's administrative cost incurred pursuant to this section, as he or she shall determine, from the special account to the general fund of the county.

Amended Sec. 8, Ch. 656, Stats. 1998. Effective January 1, 1999. Supersedes Ch. 118. Amended and renumbered from 23249.55 Sec. 33, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1, 1999.

Amended Sec. 13, Ch. 1064, Stats. 2000. Effective September 30, 2000.

Rules and Guidelines

 $23650. \ \ \,$ The Office of Traffic Safety shall adopt rules and guidelines to implement Sections 23646 to 23649, inclusive.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 43, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999.

Article7. Presentence Investigation

Presentence Investigation

23655. (a) Upon any conviction of a violation of Section 23152 or 23153, any judge of the court may order a presentence investigation to determine whether a person convicted of the violation would benefit from one or more education, training, or treatment programs, and the court may order suitable education, training, or treatment for the person, in addition to imposing any penalties required by this code.

- (b) In determining whether to require, as a condition of probation, the participation in a program pursuant to subdivision (b) of Section 23538, subdivision (b) of Section 23542, subdivision (b) of Section 23548, subdivision (b) of Section 23552, subdivision (b) of Section 23556, subdivision (b) of Section 23562, or subdivision (b) of Section 23568, the court may consider any relevant information about the person made available pursuant to a presentence investigation, which is permitted but not required by subdivision (a), or other screening procedure. That information shall not be furnished to the court by any person who also provides services in a privately operated, approved program or who has any direct interest in a privately operated, approved program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in an approved program.
- (c) The Judicial Council shall adopt a standard form for use by all courts, defendants, and alcohol or drug education programs in certifying to the court that the person has achieved both of the following:
 - (1) Enrolled within the specified time period.
- (2) Successfully completed any program required by Section 23538 or 23556.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 44, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999.

Article9. Delayed Suspensions and Revocations

Surrender of Suspended or Revoked License

23660. If a person's privilege to operate a motor vehicle is required or ordered to be suspended or revoked by the Department of Motor Vehicles pursuant to other provisions of this code upon the conviction of an offense described in Article2 (commencing with Section 23152) of Chapter 12 of Division 11, that person shall surrender each and every operator's license of that person to the court upon conviction. The court shall transmit the license or licenses required to be suspended or revoked to the Department of Motor Vehicles pursuant to Section 13550, and the court shall notify the department.

This section does not apply to an administrative proceeding by the Department of Motor Vehicles to suspend or revoke the driving privilege of any person pursuant to other provisions of law.

Amended Sec. 18, Ch. 756, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Supersedes Ch. 118.

Amended and renumbered from 23204 Sec. 24, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1, 1999.

Notification of Restrictions to Department

23662. If a person is placed on probation, the court shall promptly notify the Department of Motor Vehicles of the probation and probationary term and conditions in a manner prescribed by the department. The department shall place the fact of probation and the probationary term and conditions on the person's records in the department.

Amended Sec. 17, Ch. 756, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Supersedes Ch. 118.

Amended and renumbered from 23203 Sec. 23, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1, 1999.

Delayed Revocation or Suspension of Driving Privilege

23665. If any person is convicted of a violation of Section 20001, or of Section 23152 or 23153 and is sentenced to one year in a county jail or more than one year in the state prison under Section 23540, 23542, 23546, 23548, 23550, 23552, 23554, 23556, 23558, 23560, 23562, 23566, or 23568, the court may postpone the revocation or suspension of the person's driving privilege until the term of imprisonment is served.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec. 45, Ch. 22, Stats. 1999. Effective May 26, 1999. Operative July 1 1999.

Article10. Conflict of Interest

Rehabilitation Program: Direct or Indirect Economic Interest

23670. A court shall not order or refer any person to any program, including an alcohol and other drug education program or a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or to a provider of a program, in which any employee of the court has a direct or indirect economic interest.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

Article11. Operative Date

Operative Date of Division

23675. This division shall become operative on July 1, 1999. Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.